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HOUSE BILL 380

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO PRIVATE INVESTIGATORS; AMENDING LICENSING
REQUIREMENTS UNDER THE PRIVATE INVESTIGATIONS ACT; IMPOSING
PENALTIES ON PRIVATE PATROL OPERATORS WHO HIRE AN UNLICENSED OR
UNREGISTERED PATROL EMPLOYEE; INCREASING EXISTING PENALTIES IN
THE PRIVATE INVESTIGATIONS ACT; AUTHORIZING THE REGULATION AND
LICENSING DEPARTMENT TO SEEK AN INJUNCTION FOR A VIOLATION OF
THE PRIVATE INVESTIGATIONS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-27B-2 NMSA 1978 (being Laws 1993,
Chapter 212, Section 2, as amended) is amended to read:

"61-27B-2. DEFINITIONS.--As used in the Private
Investigations Act:

A. "armored car company" means a company that
knowingly and willingly transports money and other negotiables

1 for a fee or other remuneration;

2 B. "bodyguard" means an individual who physically
3 performs the mission of personal security for another
4 individual;

5 C. "branch office" means an office of a private
6 investigation company or a private patrol company physically
7 located in New Mexico and managed, controlled or directed by a
8 private investigations manager or private patrol operations
9 manager;

10 D. "client" means an individual or legal entity
11 having a contract that authorizes services to be provided in
12 return for financial or other consideration;

13 E. "conviction" means any final adjudication of
14 guilty, whether pursuant to a plea of guilty or nolo contendere
15 or otherwise and whether or not the sentence is deferred or
16 suspended;

17 F. "department" means the regulation and licensing
18 department;

19 G. "individual" means a single human being;

20 H. "legal business entity" means a sole
21 proprietorship, corporation, partnership, limited liability
22 company, limited liability partnership or other entity formed
23 for business purposes;

24 I. "licensee" means a person licensed pursuant to
25 the Private Investigations Act;

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1 J. "person" means an individual or a legal business
2 entity;

3 [~~J.~~] K. "polygraph examiner" means an individual
4 licensed by the department to engage in the practice of
5 polygraphy;

6 [~~K.~~] L. "polygraphy" means the process of employing
7 an instrument designed to graphically record simultaneously the
8 physiological changes in human respiration, cardiovascular
9 activity, galvanic skin resistance or reflex for the purpose of
10 lie detection and includes the reading and interpretation of
11 polygraphic records and results or any other device used to
12 measure truthfulness;

13 [~~L.~~] M. "private investigation company" means a
14 legal business entity that provides private investigation
15 services, the location of which may be within or outside of the
16 state, provided that the private investigation services are
17 performed within New Mexico;

18 [~~M.~~] N. "private investigator" means an individual
19 who is licensed by the department to engage in business or who
20 accepts employment to conduct an investigation pursuant to the
21 Private Investigations Act to obtain information regarding:

22 (1) crime or wrongs done or threatened against
23 the United States or any state or territory of the United
24 States;

25 (2) a person;

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1 (3) the location, disposition or recovery of
2 lost or stolen property;

3 (4) the cause or responsibility for fires,
4 losses, accidents or damage or injury to persons or properties;

5 (5) the securing of evidence to be used before
6 a court, administrative tribunal, board or investigating
7 committee or for a law enforcement officer; or

8 (6) the scene of a motor vehicle accident or
9 evidence related to a motor vehicle accident;

10 [~~N.~~] O. "private investigations employee" means an
11 individual who is registered by the department to work under
12 the direct control and supervision of a private investigator
13 for a private investigation company;

14 [~~Ø.~~] P. "private investigations manager" means an
15 individual who:

16 (1) is licensed as a private investigator and
17 is issued a license by the department as a private
18 investigations manager;

19 (2) directs, controls or manages a private
20 investigation company for the owner of the company; and

21 (3) is assigned to and operates from the
22 private investigation company that the private investigations
23 manager is licensed to manage or from a branch office of that
24 private investigation company;

25 [~~P.~~] Q. "private patrol company" means a legal

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1 business entity, the location of which may be within or outside
2 of the state, including an independent or proprietary
3 commercial organization that provides private patrol operator
4 services that are performed in New Mexico and the activities of
5 which include employment of licensed private patrol operators
6 or security guards;

7 ~~[Q.]~~ R. "private patrol employee" means an
8 individual who is registered by the department to work under
9 the direct control and supervision of a private patrol operator
10 for a private patrol company;

11 ~~[R.]~~ S. "private patrol operations manager" means
12 an individual who:

13 (1) is licensed as a private patrol operator
14 or registered as a level three security guard and is issued a
15 license by the department as a private patrol operations
16 manager;

17 (2) directs, controls or manages a private
18 patrol company for the owner of the company; and

19 (3) is assigned to and operates from the
20 private patrol company that the private patrol operations
21 manager is licensed to manage or from a branch office of that
22 private patrol company;

23 ~~[S.]~~ T. "private patrol operator" means an
24 individual who is licensed by the department to:

25 (1) conduct uniformed or nonuniformed services

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1 as a watchman, security guard or patrolman to protect property
2 and persons on or in the property;

3 (2) prevent the theft, unlawful taking, loss,
4 embezzlement, misappropriation or concealment of goods, wares,
5 merchandise, money, bonds, stocks, notes, documents, papers or
6 property of any kind; or

7 (3) perform the services required of a
8 security guard or security dog handler or provide security
9 services for an armored car company;

10 [~~F.~~] U. "proprietary commercial organization" means
11 an organization or division of an organization that provides
12 full- or part-time security guard services solely for itself;

13 [~~U.~~] V. "registrant" means an individual registered
14 as a private investigations employee, a private patrol
15 operations employee or a security guard at any level;

16 [~~V.~~] W. "security dog handler" means an individual
17 who patrols with dogs to detect illegal substances or
18 explosives;

19 [~~W.~~] X. "security guard" means an individual who is
20 registered to engage in uniformed or nonuniformed services
21 under the direct control and supervision of a licensed private
22 patrol operator or a private patrol operations manager to
23 perform such security missions as watchman, fixed post guard,
24 dog handler, patrolman or other person to protect property or
25 prevent thefts; and

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1 ~~[X.]~~ Y. "special event" means a parade or other
2 public or private event of short duration requiring security."

3 Section 2. Section 61-27B-3 NMSA 1978 (being Laws 1993,
4 Chapter 212, Section 3, as amended) is amended to read:

5 "61-27B-3. LICENSE REQUIRED.--

6 A. It is unlawful for an individual to:

7 ~~[A.]~~ (1) act as a private investigator,
8 private patrol operator, security guard, private investigations
9 employee, private investigations manager or private patrol
10 operations manager or to make any representation as being a
11 licensee or registrant unless the individual is licensed by the
12 department pursuant to the Private Investigations Act;

13 ~~[B.]~~ (2) render physical protection for
14 remuneration as a bodyguard unless the individual is licensed
15 as a private investigator or a private patrol operator;

16 ~~[C.]~~ (3) continue to act as a private
17 investigator, private patrol operator, security guard, private
18 investigations employee, private investigations manager or
19 private patrol operations manager if the individual's license
20 issued pursuant to the Private Investigations Act has expired;

21 ~~[D.]~~ (4) falsely represent that the individual
22 is employed by a licensee; or

23 ~~[E.]~~ (5) practice polygraphy for any
24 remuneration without a license issued by the department in
25 accordance with the Private Investigations Act.

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1 B. It is unlawful for a private patrol operator to
2 contract with or employ a person to perform duties as a
3 security guard, private patrol operations manager or private
4 patrol employee unless that person is licensed or registered by
5 the department to perform those duties pursuant to the Private
6 Investigations Act."

7 Section 3. Section 61-27B-27 NMSA 1978 (being Laws 1993,
8 Chapter 212, Section 14, as amended) is amended to read:

9 "61-27B-27. HEARING--PENALTIES.--

10 A. A person who is denied a license or registration
11 or who has a license or registration suspended or revoked shall
12 be entitled to a hearing before the department if within twenty
13 days after the denial, suspension or revocation a request for a
14 hearing is received by the department. The procedures of the
15 Uniform Licensing Act shall be followed pertaining to the
16 hearing to the extent that they do not conflict with the
17 provisions of the Private Investigations Act.

18 B. In accordance with the provisions of the Uniform
19 Licensing Act, and in addition to other penalties provided by
20 law, the department may impose the following:

21 (1) for a violation of the Private
22 Investigations Act, a civil penalty not to exceed one thousand
23 dollars (\$1,000) for each violation; [~~and~~]

24 (2) against a person who is found by the
25 department to be engaging in a practice regulated by the

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1 department without an appropriate license or registration,
2 civil penalties not to exceed [~~one thousand dollars (\$1,000)~~]
3 five thousand dollars (\$5,000); and

4 (3) against a private patrol operator who
5 contracts with or employs another person to engage in a
6 practice regulated by the department under the Private
7 Investigations Act without an appropriate license or
8 registration, civil penalties not to exceed five thousand
9 dollars (\$5,000)."

10 Section 4. Section 61-27B-32 NMSA 1978 (being Laws 1993,
11 Chapter 212, Section 20, as amended) is amended to read:

12 "61-27B-32. PENALTIES.--

13 A. A person who engages in a business regulated by
14 the Private Investigations Act who fraudulently makes a
15 representation as being a licensee or registrant is guilty of a
16 misdemeanor and if convicted shall be sentenced pursuant to
17 Section 31-19-1 NMSA 1978.

18 B. An individual who fraudulently represents that
19 the individual is employed by a licensee is guilty of a petty
20 misdemeanor and if convicted shall be sentenced pursuant to
21 Section 31-19-1 NMSA 1978.

22 C. A private patrol operator who contracts with or
23 employs another person to engage in a practice regulated by the
24 department under the Private Investigations Act without an
25 appropriate license or registration is guilty of a petty

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1 misdemeanor and if convicted shall be sentenced pursuant to
2 Section 31-19-1 NMSA 1978.

3 [G.] D. A person who violates a mandatory
4 requirement, as set forth by the department in rule, of the
5 Private Investigations Act is guilty of a petty misdemeanor
6 except as provided in Subsection A of this section and if
7 convicted shall be sentenced pursuant to Section 31-19-1 NMSA
8 1978.

9 E. Upon a second conviction pursuant to this
10 section, an offender is guilty of a fourth degree felony and if
11 convicted shall be sentenced pursuant to the Criminal
12 Sentencing Act."

13 Section 5. A new section of the Private Investigations
14 Act is enacted to read:

15 "[NEW MATERIAL] ENFORCEMENT--INJUNCTION.--

16 A. Whenever the department has reasonable cause to
17 believe that a person has violated a provision of the Private
18 Investigations Act or a rule adopted pursuant to that act and
19 the violation creates a safety risk for the community and
20 immediate enforcement is deemed necessary, the department may
21 issue a cease and desist order to require the person to cease
22 the violation. At any time after service of the order to cease
23 and desist, a person may request a prompt hearing to determine
24 whether a violation occurred. If a person fails to comply with
25 a cease and desist order within twenty-four hours, the

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1 department may bring a suit for a temporary restraining order
2 and for injunctive relief to prevent further violations.

3 B. Whenever the department possesses evidence that
4 indicates a person has engaged in or intends to engage in an
5 act or practice constituting a violation of the Private
6 Investigations Act or a rule adopted pursuant to that act, the
7 department may seek, and the district court of Santa Fe county
8 may issue, an order temporarily or permanently restraining or
9 enjoining the act or practice. The department shall not be
10 required to post a bond when seeking a temporary or permanent
11 injunction."